

EXHIBIT “A”

JUAN SIMENTAL - September 3, 2014

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I N D E X

PAGE

Examination by Mr. Robinson

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Reporter's Certificate

84

I N D E X O F

E X H I B I T S

PAGE

(Pages 81 through 83 were marked as
Confidential Subject of a Protective Order.)

---oOo---

1 **A. I was in the Marine Corp.**

2 Q. Where were you stationed?

3 **A. Camp Pendelton, California and South Korea.**

4 Q. What rank did you obtain?

5 **A. Sergeant.**

6 Q. E-5?

7 **A. Yes, sir.**

8 Q. Why did you leave the military?

9 **A. To pursue a career in law enforcement. At**
10 **that time I didn't leave the military, I still**
11 **remained in the reserves.**

12 Q. Are you a reservist still?

13 **A. No, sir.**

14 Q. Before November 30, 2011, did you have any
15 interactions at all with Bruce Kyles?

16 **A. Yes, sir, I did.**

17 Q. When was your initial interaction with Bruce
18 Kyles?

19 **A. I arrested him in -- I was working as a police**
20 **officer in Pittsburg. I don't remember the date. I**
21 **would estimate to say that it was sometime in 2007.**

22 **Q. On November 30, 2011, during your initial**
23 **interaction with Mr. Kyles, did you recognize him?**

24 **A. Yes, sir, I did.**

25 **Q. And what did you know about him as you were**

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1 interacting with him on November 30, 2011?

2 A. I knew he was violent towards police.

3 Q. Did you have that in mind when you were
4 interacting with him?

5 A. Yes.

6 Q. When you say "violent towards police," what do
7 you mean?

8 A. He's a fighter. He likes to fight the
9 police.

10 Q. When you arrested him, what did you arrest him
11 for in 2007?

12 A. Possession and resisting arrest and possession
13 of heroine.

14 Q. In 2007 when you arrested him, who else was
15 present during the arrest?

16 A. Officer James Terry.

17 Q. Did Mr. Kyles get violent with you?

18 A. No.

19 Q. What did he do to resist arrest at that time?

20 A. At that time we stopped him for a municipal
21 violation on his bicycle. He refused to stop and
22 took off on his bicycle. I tackled him off his
23 bicycle. He refused to place his hands behind his
24 back. We had to forcibly place his hands behind his
25 back, and place him under arrest for possessing

1 **heroine.**

2 Q. Was he charged with a PC 69 violation?

3 A. **No, sir.**

4 Q. PC 148?

5 A. **Yes, sir, from what I can remember without**
6 **looking at the report.**

7 Q. You know, let's talk about why you came out to
8 the scene on November 30, 2011.

9 What led you to go to 1906 Seaward on that
10 day?

11 A. **I received -- I was dispatched to take a call**
12 **from a reporting party. I will butcher her name**
13 **here -- Penashey (phonetic.) She stated she owned**
14 **the property at 1905 Seaward.**

15 Q. That's across the street from 1906?

16 A. **Yes, sir.**

17 Q. How long did you speak with Ms. Penashey?

18 A. **Approximately 20 minutes.**

19 Q. What did she tell you during this
20 conversation?

21 A. **She told me that she has a friend who lives at**
22 **1905 -- she rents out to a friend at 1905, and that**
23 **her friend is very scared to go out at night. She**
24 **is -- she constantly see loiterers in front of 1906.**
25 **She suspects drug activity. And on various occasions**

1 she had seen physical altercations, fights at the
2 location in front of the house.

3 Q. At the time you spoke to Ms. Penashey on
4 November 30, 2011, did she describe criminal activity
5 in progress at 1906 Seaward?

6 A. No.

7 Q. She just reported that history of complaints
8 she had about the property and people engaging in
9 what she believed to be criminal contact on the
10 premises; correct?

11 A. Yes, sir.

12 Q. When you arrived at 1906 Seaward on
13 November 30, 2011, what was the first thing you saw
14 that was suspicious?

15 A. I saw a brown sedan parked in the driveway
16 with no license plates, and two subjects sitting in
17 the vehicle.

18 Q. Is it illegal to park an unlicensed vehicle on
19 private property?

20 A. No, sir.

21 Q. What was suspicious about what you observed
22 initially?

23 A. What was suspicious to me that at the time of
24 the day -- initially upon arriving, black male exits
25 the driver's seat and becoming very confrontational

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1 **with me.**

2 Q. Did Mr. Kyles -- strike that.

3 You learned later that was Mr. Kyles; correct?

4 **A. Yes.**

5 Q. Was Mr. Kyles --

6 MR. ALLEN: Well, objection as to "learned
7 later." He said that he recognized Kyles upon seeing
8 him.

9 MR. ROBINSON: Okay.

10 **Q. When did you first realize that was Bruce**
11 **Kyles in the vehicle?**

12 **A. As soon as he exited the vehicle.**

13 Q. Was he combative as soon as he exited?

14 **A. Yes, he was.**

15 Q. And where were you when Mr. Kyles exited the
16 vehicle?

17 **A. We almost exited simultaneously. I exited my**
18 **patrol vehicle pretty much at the same time that he**
19 **exited his car.**

20 Q. And your patrol vehicle, was the driver's side
21 parked curbside, or was it parked street side?

22 **A. Driver's side was parked curbside.**

23 Q. So you had a straight shot to the vehicle
24 where Mr. Kyles was sitting when you first arrived;
25 is that correct?

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1 **A. Correct.**

2 Q. Was Mr. Kyles engaged in any criminal activity
3 when you first observed the black male in the vehicle
4 at 1906 Seaward?

5 **A. No.**

6 Q. When you first approached the car in which
7 Mr. Kyles was sitting, as he exited, was it your
8 intention to detain him?

9 **A. Not at that point.**

10 Q. Did you have any understanding as you
11 approached the vehicle and recognized Mr. Kyles, that
12 he was on either probation or parole?

13 **A. I believe I knew he was on parole. I don't**
14 **recall whether I did or not.**

15 Q. At some point did you make a decision to
16 detain Mr. Kyles?

17 **A. Yes, I did.**

18 **Q. When did you make that decision?**

19 **A. I made the decision to detain Mr. Kyles when**
20 **he continued to obstruct my investigation into making**
21 **contact at the residence, No. 1. And, No. 2,**
22 **allowing -- distracting me enough to allow the female**
23 **he was with to flee the scene.**

24 **Q. Let's break that down.**

25 **A. Sure.**

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1 Q. So Mr. Kyles was obstructing your ability to
2 maintain control of the female who fled the scene; is
3 that correct?

4 A. Yes.

5 Q. What was he doing to obstruct that ability?

6 A. He was challenging me to a fight.

7 Q. Was he challenging you to a fight, or was he
8 challenging you to arrest him?

9 A. He was challenging me to -- threatened to
10 fight if I detained him or arrested him.

11 Q. How many times did he challenge you before you
12 made the decision to detain him?

13 A. I would say approximately five.

14 Q. When you approached Mr. Kyles, did you have
15 any weapons drawn?

16 A. No.

17 Q. At what point in this interaction with
18 Mr. Kyles, did you draw a weapon, if at all?

19 A. Initially I had my taser out, which is
20 referred to as a weapon. Is that...

21 Q. Okay. Back up a second.

22 What particular weapons did you have on your
23 belt at the time you approached the Kyles -- the
24 vehicle that Kyles was in?

25 A. I had my baton, my firearm, taser, pepper

1 **spray -- tools, I guess.**

2 Q. Tools, okay. And when you exited your vehicle
3 and you had both feet on the ground, did you draw a
4 weapon at that time or tool at that time?

5 A. **No, sir.**

6 Q. At what point did you initially remove a tool
7 from your belt?

8 A. **When I saw Mr. Kyles' demeanor towards me.**
9 **His clenched fists walking towards my direction. At**
10 **that point I pulled out my taser.**

11 Q. At what point did you activate your taser
12 camera?

13 A. **As soon as you turn on the taser, it**
14 **activates the camera at the same time.**

15 Q. And the camera has both the video and audio
16 portion?

17 A. **Yes.**

18 Q. They're both activated at the same time?

19 A. **Yes, sir.**

20 Q. When Mr. Kyles was sitting in the vehicle, did
21 you believe he posed a risk of physical harm to you
22 or somebody else?

23 A. **No.**

24 Q. When Mr. Kyles exited the vehicle, did you
25 believe at the moment he exited, that he posed a

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1 A. By delaying my investigation at the location.

2 Q. You read your report yesterday; correct?

3 A. Yes, sir.

4 Q. In your report you note several times that
5 Mr. Kyles continued to provoke, attempting to fight
6 you.

7 What did he do to provoke you?

8 A. He challenged me to a fight. He clenched his
9 fists. He would not stand still. He would walk
10 towards me, stop, back up. Attempt to circle me and
11 walk back towards center, all the while, yelling
12 profanities. Telling me to go fuck myself, to leave
13 the location. The police had no business to be
14 there, and while his fists were clenched.

15 Q. And in connection with his attempts to fight
16 you, were those different than the attempts to
17 provoke you or the same thing?

18 A. I would say the same thing.

19 Q. At some point you grabbed Mr. Kyles and
20 attempted to place his arm behind his back?

21 A. Yes, sir.

22 Q. What was your reason for doing that?

23 A. To be detained.

24 Q. And did you place -- strike that.

25 What purpose does placing a suspect's arm

1 did you have reasonable suspicion that Mr. Kyles was
2 engaged in criminal activity?

3 **A. Repeat the question, please.**

4 MR. ROBINSON: Could you read it back, please.

5

6 (Whereupon the record was read.)

7

8 MR. ROBINSON: Thank you.

9 THE WITNESS: One, I didn't know that was
10 Mr. Kyles prior to him exiting the vehicle. And,
11 No. 2, that amount of time, it would have been less
12 than a second. So I don't think I can answer that.

13 I know I did see him parked at the location.
14 So I was definitely going to talk to him. There was
15 a vehicle in the driveway with no license plates.
16 Two subjects sitting in the car in the dark. And I
17 hadn't taken a good look at the house yet. From my
18 last experience, it was still a squatter house. So I
19 think at that point I did have reason to detain both
20 of them.

21 MR. ALLEN: The question was, did you have
22 reasonable suspicion?

23 THE WITNESS: Yes.

24 MR. ROBINSON:

25 Q. Okay. What was that suspicion based on?

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1 **A. Based on the time of night, the location, the**
2 **lighting situation. The vehicle had no plates on it.**
3 **It was a known squatter house. There was a report of**
4 **illegal drug activity at the location. There was**
5 **reports of fights in front of the location, and**
6 **reports of loiterers at the location as well.**

7 Q. So let's talk about your knowledge of the
8 property. We've already touched on this.

9 Prior to the November 30, 2011, you had found
10 illegal drugs in the property; right?

11 **A. No, I did not say that.**

12 Q. Had you ever arrested any people at the
13 property before?

14 **A. Yes.**

15 Q. For what crimes?

16 **A. Trespassing, if I remember correctly. That**
17 **happened -- I haven't looked it up before coming.**

18 Q. And before November 30, 2011, had you ever
19 been witness to any fights or the remaining aftermath
20 at the 1906 Seaward property?

21 **A. No, sir.**

22 **Q. Mr. Kyles at some point asked you if you were**
23 **arresting him; correct?**

24 **A. Yes.**

25 **Q. He also asked you -- well, he didn't.**

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1 When he asked you if you were arresting him,
2 did you respond to him?

3 **A. No, sir, I didn't.**

4 **Q. Why not?**

5 **A. Because it was the way he was acting, very**
6 **violent and threatening to use violence. If I were**
7 **to place him under arrest, I didn't find it feasible**
8 **to let him know at that point without a cover officer**
9 **there for my safety and Mr. Kyles' safety.**

10 **Q. Isn't it true, though, when you arrest**
11 **somebody, you have to tell them why you're arresting**
12 **them?**

13 **MR. ALLEN: Objection. Calls for a legal**
14 **conclusion. You can answer.**

15 **THE WITNESS: When feasible.**

16 **MR. ROBINSON:**

17 **Q. I'm sorry?**

18 **A. When feasible.**

19 **Q. And in your estimation on November 30, 2011,**
20 **it was not feasible to tell Mr. Kyles why you were**
21 **arresting him; is that correct?**

22 **A. At that point, yes, sir.**

23 **Q. And before you arrested him but while you were**
24 **trying to detain him, did you tell Mr. Kyles why you**
25 **were detaining him?**

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1 A. No.

2 Q. And why is that?

3 A. Prior to the taser camera turning on, I asked
4 basic questions -- I attempted to ask basic questions
5 as to what they were doing there. He wouldn't
6 respond to any of them.

7 Q. When you draw your taser and activated the
8 taser camera, was it your intention to detain him?

9 A. Yes.

10 Q. And did you tell him at that point why you
11 were detaining him?

12 A. No.

13 Q. And why not?

14 A. Once, again, because of his mannerisms. He
15 was very angry, threatening violence towards me from
16 the very beginning. And there was no reason to
17 escalate the situation to a violent confrontation
18 between myself and Mr. Kyles without a cover officer
19 there.

20 Q. Did you read Mr. Kyles' deposition transcript?

21 A. No, sir, I did not.

22 Q. Mr. Kyles testified -- I will represent to you
23 that Mr. Kyles testified during his deposition that
24 you may have approached him with a gun drawn.

25 My question is: During this interaction, from

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1 **A. Yes, sir.**

2 Q. Let's break it down.

3 How many times did you use the darts or the
4 projectiles on Mr. Kyles that evening?

5 **A. Never.**

6 Q. How many times did you press the taser against
7 Mr. Kyles' body attempting to discharge the taser on
8 to Mr. Kyles' body?

9 **A. I would say approximately five times.**

10 **Q. How many times were you actually able to tase**
11 **Mr. Kyles?**

12 **A. The taser runs on a cycle of five seconds. At**
13 **each incident that I'm referring to, the five times,**
14 **I would estimate that each time I was able to hold**
15 **the contact for approximately one second.**

16 Q. Have you ever been tased?

17 **A. Yes, sir.**

18 Q. How many occasions?

19 **A. Three.**

20 Q. And when you were tased -- well, strike that.

21 Were each of those three occasions during your
22 training?

23 **A. Yes, sir.**

24 Q. And when you were tased?

25 **A. Actually, I've been tased approximately five**

1 **A. No, sir.**

2 Q. In your report I noted, and I might be wrong,
3 that you did not indicate that you had been out to
4 the property on previous occasions, did you?

5 **A. No, I did not.**

6 Q. Why not?

7 **A. That report would have probably read -- would**
8 **have been 100 pages long if that was the case.**

9 Q. In reading your report at the -- strike that.
10 When you wrote your report, you did not
11 indicate that you had been out to the property at all
12 on prior occasions, did you?

13 **A. No, sir.**

14 Q. And the reason for that is?

15 MR. ALLEN: Assumes there's a reason. You can
16 answer.

17 THE WITNESS: We typically don't include that
18 unless it's contact with somebody who's been there
19 before, particularly with domestic violence or things
20 of that sort.

21 MR. ROBINSON:

22 **Q. In your -- on the third -- the fourth page of**
23 **your report, page No. 4, first paragraph, you walked**
24 **towards Kyles and he began to yell at and told you to**
25 **leave; right?**

1 **A. Go fuck myself. Go fuck yourself, that's what**
2 **he said.**

3 Q. He said these words to you even before you
4 could explain why you were there; right?

5 **A. Yes, sir.**

6 Q. Did you again -- strike that.

7 Did you begin to ask Mr. Kyles routine
8 investigative questions?

9 **A. I attempted to.**

10 Q. What questions were you attempting to ask?

11 **A. What he was doing there. If he knew who the**
12 **homeowner was. What they were doing.**

13 Q. Did he answer any of your questions?

14 **A. No, sir.**

15 Q. In the second paragraph it reads, "Kyles would
16 walk towards me with clenched fists in an offensive
17 manner as to hit me and then would stop and take a
18 few steps back."

19 Did you feel threatened when Mr. Kyles
20 approached you or walked towards you with fists
21 clenched?

22 **A. I did.**

23 Q. You did?

24 **A. Yes, sir, to a certain degree, yes.**

25 Q. Then he would take a few steps back?

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1 **A. Yes, sir.**

2 Q. Did you move towards him as he stepped back?

3 **A. I don't remember.**

4 Q. He challenged you telling you that he was
5 going to resist any arrest; right?

6 **A. Yes, sir.**

7 **Q. He also challenged you telling you that he had**
8 **the right to fight back; correct?**

9 **A. Yes, sir.**

10 Q. On November 30, 2011, was it your
11 understanding of the law that a person could resist
12 an unlawful arrest?

13 MR. ALLEN: Objection. Calls for a legal
14 conclusion. You can answer.

15 THE WITNESS: Sorry. Could you repeat the
16 question?

17 MR. ROBINSON: Yes. With the objection noted
18 and preserved, could you please read the question
19 back, Madame Reporter.

20
21 (Whereupon the record was read.)

22
23 THE WITNESS: No.

24 MR. ROBINSON:

25 Q. As you sit here today, is it your

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1 A. Yes, sir.

2 Q. How many times did he go down on the ground?

3 A. Once.

4 Q. How was it is that -- strike that.

5 How did he go to the ground?

6 A. I attempted to -- by further deescalating the
7 situation, putting my taser way, giving him an
8 opportunity to submit to the arrest. I grabbed his
9 right arm, at which time he again fought back towards
10 me. And I leg swept him, causing him to fall to the
11 ground.

12 Q. Did you use a right or left leg?

13 A. I used my right leg me.

14 Q. On his left leg; correct?

15 A. My right leg on his right leg.

16 Q. You went behind him directly?

17 A. No.

18 Q. Across?

19 A. I was standing kind of a blade. Then my
20 right -- I'm sorry. My left hand was grasping his
21 right wrist. My right hand was up towards his left
22 shoulder. I used my right leg to sweep his right
23 leg.

24 Q. Officer Saechao was present during that leg
25 sweep; right?

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1 **laying on his back or his side. I don't remember**
2 **exactly.**

3 Q. But you were trying to place him on his
4 stomach; correct?

5 A. **Yes, sir.**

6 Q. And Officer Saechao was assisting in trying to
7 get Mr. Kyles on his stomach; correct?

8 A. **Yes, sir.**

9 Q. And Mr. Kyles began to punch at Officer
10 Saechao; correct?

11 A. **At both of us.**

12 Q. And which hand was he using to try and punch
13 at you?

14 A. **Both hands.**

15 Q. So at some point then you lost control of his
16 right arm; right?

17 A. **That's correct.**

18 Q. But while --

19 MR. ALLEN: Assumes he ever had control of his
20 right arm.

21 MR. ROBINSON:

22 Q. You lost your grip on his right arm.

23 A. **Yes, very, very early.**

24 Q. During this interaction with you and Officer
25 Saechao attempting to get Mr. Kyles to lay on his

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1 stomach while Mr. Kyles was punching at both of you,

2 you were giving him commands, weren't you?

3 A. Yes, sir.

4 Q. What were you telling him to do?

5 A. We were telling him to lie on his stomach and
6 place his hands behind his back.

7 Q. It was your intent to place handcuffs on his
8 wrists?

9 A. Yes, sir.

10 Q. And that would mean you were taking him into
11 detention; right?

12 A. Yes, sir.

13 Q. At that point in time, if you had placed
14 handcuffs on his wrists, he would have been under
15 arrest --

16 A. Yes.

17 Q. -- for actively resisting; correct?

18 A. Yes, sir, and delaying my investigation.

19 Q. You were able to -- strike that.

20 You were able to briefly place Kyles on his
21 stomach, but he continued to fight you; right?

22 A. Yes, sir.

23 Q. How long did he spend on his stomach?

24 A. Very short period of time.

25 Q. And at some point you had a grip on his left

1 You were trying to get Kyles on his stomach;
2 correct?

3 **A. Yes, sir.**

4 Q. Where were you standing in connection with
5 Kyles when you tried to contact tase him in the
6 middle of his back?

7 **A. I was more than likely on my knees right next**
8 **to him, attempting to grab ahold of his arm -- gain**
9 **control of his arm and place it behind his back.**

10 Q. You were attempting to gain control of his
11 left arm at that time?

12 **A. Yes, sir.**

13 Q. Which hand were you using, your right or left
14 hand?

15 **A. I believe I was using my left because I had**
16 **the taser in my right.**

17 Q. You were left on left?

18 **A. Correct.**

19 Q. And are you right-handed?

20 **A. I am.**

21 **Q. So you had your taser in your right hand, and**
22 **you placed it on the middle part of his back --**

23 **A. Yes, sir.**

24 **Q. -- between the shoulder blades?**

25 **A. Yes.**

1 Q. And you attempted to discharge the taser;
2 correct?

3 A. Without the cartridge.

4 Q. Without the cartridge?

5 A. Contact tase.

6 Q. Mr. Kyles was able to either -- strike that.
7 How did Mr. Kyles prevent the five-second tase
8 from effecting him?

9 A. He was still moving around and trying to sit
10 up on his buttocks and continue to resist --
11 fighting.

12 Q. Did you see the blow from Mr. Kyles that
13 caused the scratch to appear at the top of the right
14 eye of Officer Saechao?

15 A. Exact blow, no, I did not.

16 Q. You saw Mr. Kyles swinging in that direction
17 of Officer Saechao?

18 A. Yes, sir.

19 Q. You go on to say in the third paragraph,
20 because Officer Saechao and you were the only
21 officers there at the time, "I discarded my taser and
22 grabbed Kyles with both hands."

23 What did you do to discard your taser?

24 A. I just threw it. Gave it a good toss to the
25 side.

1 **A. Yes, sir.**

2 Q. What was he doing to actively resist in the
3 moments before Xena was deployed on him?

4 **A. He was refusing to place his hands behind his**
5 **back, even as Officer Saechao, and I had full grasp**
6 **of his arms and we were attempting to pull them out**
7 **from underneath his person.**

8 Q. During your entire interaction with Mr. Kyles,
9 leading up to the point when Xena came into contact
10 with him, did you suspect Mr. Kyles had a weapon?

11 **A. I did not know.**

12 Q. So you were unsure; correct?

13 **A. Yes.**

14 Q. And in handcuffing Mr. Kyles, was it your
15 intent to attempt to prevent Mr. Kyles from using any
16 possible weapon that may be in the vicinity?

17 **A. Yes, sir.**

18 Q. After you arrested Mr. Kyles or were able to
19 place him in handcuffs, did you search him?

20 **A. Yes, sir.**

21 Q. Did you find any weapons?

22 **A. No, sir.**

23 Q. Did you find any illegal drugs on him?

24 **A. No, sir.**

25 Q. Going down, still on page 5, you struck

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1 Mr. Kyles approximately two times on his left tricep;
2 correct?

3 A. Yes, sir.

4 Q. That's using the flashlight?

5 A. Right.

6 Q. The purpose of striking Mr. Kyles was to
7 effect what?

8 A. To loosen his wrists -- I'm sorry. Loosen his
9 grasp so I could gain control of his arm.

10 Q. When you say "loosen his grasp," what was he
11 grasping?

12 A. His hand.

13 Q. So he had his arms tucked in front of him
14 laying on the ground; right?

15 A. Near his waistband, yes, underneath.

16 Q. Laying on his stomach?

17 A. Yes.

18 Q. And you struck his left tricep twice and were
19 able to successfully free the left arm; correct?

20 A. Yes, sir.

21 Q. And then Officer Saechao was able to get
22 control of the right arm; correct?

23 A. Yes, sir.

24 Q. And you placed Mr. Kyles in handcuffs; right?

25 A. Yes, sir.

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1 STATE OF CALIFORNIA) SS

2 I do hereby certify that the witness in
3 the foregoing deposition was by me duly sworn to
4 testify to the truth, the whole truth, and nothing
5 but the truth in the within-entitled cause; that
6 said deposition was taken at the time and place
7 therein stated; that the testimony of said witness
8 was reported by me, a certified shorthand reporter
9 and a disinterested person, and was under my
10 supervision thereafter transcribed into typewriting,
11 and when so transcribed was carefully read to or by
12 the said witness, and, being in every desire, was
13 thereafter by the said witness duly subscribed; that
14 if unsigned by the witness, signature has been
15 waived in accordance with stipulation between
16 counsel for the respective parties.

17 And I further certify that I am not of
18 counsel or attorney for either or any of the parties
19 to said deposition nor in any way interested in the
20 outcome of the cause named in said caption.

21 IN WITNESS WHEREOF, I have hereunder subscribed my
22 hand on the 16th day of September 2014.

23 

24 _____
25 COLLEEN ALVARADO
 Certified Shorthand Reporter